

**AN ORDINANCE
BY COUNCILMEMBER ANNE FAUVER
AS SUBSTITUTED BY FINANCE/EXECUTIVE COMMITTEE**

AN ORDINANCE AUTHORIZING A REIMBURSEMENT OF DEVELOPMENT IMPACT FEES PAID BY DEWBERRY CAPITAL CORPORATION AT 1543-1559 PEACHTREE STREET AND THE GRANTING OF FUTURE IMPACT FEE CREDITS IN CONNECTION WITH INFRASTRUCTURE IMPROVEMENTS WHICH WERE REQUIRED PURSUANT TO ZONING CONDITIONS IMPOSED BY ORDINANCE 99-O-1235; THE AMOUNT OF SUCH REFUND IS NOT TO EXCEED \$674,638, THE AMOUNT ORIGINALLY PAID, AND WILL BE CHARGED TO AND PAID FROM 3502 (GENERAL GOVERNMENT CAPITAL FUND) 130308 (DEPARTMENT OF PUBLIC WORKS TRANSPORTATION DESIGN) 5730012 (REFUNDS) 4270000 (TRAFFIC ENGINEERING); THE AMOUNT OF SUCH CREDITS TO BE DETERMINED BY THE DEPARTMENT OF PUBLIC WORKS; AND FOR OTHER PURPOSES

WHEREAS, Dewberry Capital Corporation ("Dewberry") applied for the rezoning of property located at 1543-1559 Peachtree Street for the construction of a new mixed use development, consisting of three buildings known as "One Peachtree Pointe," "Two Peachtree Pointe" and "Gallery Uptown" ("the Peachtree Pointe Development"); and

WHEREAS, certain of the conditions of Ordinance 99-O-1235 which rezoned the property to allow for the construction of the Peachtree Pointe Development required that certain intersection improvements be constructed in the area in order to improve the flow of traffic and increase pedestrian safety; and

WHEREAS, the zoning conditions caused Dewberry to make certain street intersection improvements at the intersections of (i) Peachtree Street and Spring Street and (ii) Peachtree Street, Robin Hood Lane and Beverly Drive (collectively referred to as the "Required Intersection Improvements"); and

WHEREAS, the Required Intersection Improvements are "system improvements," as defined by O.C.G.A. Sec. 36-71-2(18) and Sec. 19-1006 of the City of Atlanta Code of Ordinances; and

WHEREAS, the Georgia Development Impact Fee Act states that municipalities may not require that system improvements be financed or installed as a condition of zoning other than through the imposition of development impact fees; and

WHEREAS, certain portions of Peachtree Street adjacent to the Peachtree Pointe Development are controlled by the Georgia Department of Transportation and also have an impact on access to and from the I-85 Connector; and

and granting to Dewberry transportation impact fee credits for the balance of the cost of such improvements. The amounts specified in this agreement shall not exceed the amounts forth in this ordinance.

Section Two: The agreement authorized by this ordinance shall grant to Dewberry the right to transportation impact fee credits for future development in an amount not to exceed \$2,445,984, which has been calculated by reducing the amount of the cost for the Required and Additional Intersection Improvements (\$3,120,622) by the amount of the transportation impact fees paid (\$674, 638). The credit shall be limited to those charges approved by the Department of Public Works as necessary and customary for the completion of the Required Street Improvements and the Additional Street Improvements.

Section Three: The agreement authorized by this ordinance shall grant to Dewberry the right to receive a cash reimbursement for transportation impact fees paid at the Peachtree Pointe Development in an amount not to exceed \$674,638. The cash reimbursement shall not be greater than the amount of transportation impact fees actually paid and must be less than charges approved by the Department of Public Works as necessary and customary for the completion of the Required Street Improvements and the Additional Street Improvements.

Section Five: The agreement authorized by this ordinance shall require that Dewberry's cash reimbursement from the City be reduced by the amount necessary to complete the streetscape but not to exceed \$35,000.

Section Six: The Chief Financial Officer is authorized to make such payments as required by this ordinance which will be charged to and paid from 3502 (General Government Capital Fund) 130308 (Department of Public Works Transportation Design) 5730012 (Refunds) 4270000 (Traffic Engineering) and to coordinate the issuance of credits with the Director of the Bureau of Buildings.

Section Seven: The City Attorney is authorized to prepare an appropriate agreement to effectuate the terms of this ordinance and to include such language as is necessary to conclude any outstanding legal issues with regard to the streetscape agreement, provided however that any language concluding such issues may not cause the limit of any amount stated in this ordinance to be exceeded.

Section Eight: This ordinance shall become effective upon its execution by the Mayor or at the time provided by operation of Section 2-403 of the Charter.

AN ORDINANCE

BY COUNCILMEMBER ANNE FAUVER

AN ORDINANCE AUTHORIZING A REIMBURSEMENT OF DEVELOPMENT IMPACT FEES PAID BY DEWBERRY CAPITAL CORPORATION AT 1543-1559 PEACHTREE STREET AND THE GRANTING OF FUTURE IMPACT FEE CREDITS IN CONNECTION WITH INFRASTRUCTURE IMPROVEMENT WHICH WERE REQUIRED PURSUANT TO ZONING CONDITIONS IMPOSED BY ORDINANCE 99-O-1235; AND FOR OTHER PURPOSES

WHEREAS, Dewberry Capital Corporation ("Dewberry") applied for the rezoning of property located at 1543-1559 Peachtree Street for the construction of a new mixed use development, consisting of three buildings known as "One Peachtree Pointe," "Two Peachtree Pointe" and "Gallery Uptown" ("the Peachtree Pointe Development"); and

WHEREAS, certain of the conditions of Ordinance 99-O-1235 which rezoned the property to allow for the construction of the Peachtree Pointe Development required that certain intersection improvements be constructed in the area in order to improve the flow of traffic and increase pedestrian safety; and

WHEREAS, the zoning conditions caused Dewberry to make certain street intersection improvements at the intersections of (i) Peachtree Street and Spring Street and (ii) Peachtree Street, Robin Hood Lane and Beverly Drive (collectively referred to as the "Required Intersection Improvements"); and

WHEREAS, the Required Intersection Improvements are "system improvements," as defined by O.C.G.A. Sec. 36-71-2(18) and Sec. 19-1006 of the City of Atlanta Code of Ordinances; and

WHEREAS, the Georgia Development Impact Fee Act states that municipalities may not require that system improvements be financed or installed as a condition of zoning other than through the imposition of development impact fees; and

WHEREAS, certain portions of Peachtree Street adjacent to the Peachtree Pointe Development are controlled by the Georgia Department of Transportation and also have an impact on access to and from the I-85 Connector; and

WHEREAS, the permission of the Georgia Department of Transportation is required to make improvements to right of way under its control; and

WHEREAS, the City of Atlanta Bureau of Traffic and Transportation, the City of Atlanta Bureau of Planning and the Georgia Department of Transportation identified certain additional intersection improvements ("Additional Intersection Improvements") that were necessary to supplement the operation of the Required Intersection

Improvements in order to maximize the effectiveness of such improvements and to minimize negative impact to other parts of the street system in the area; and

WHEREAS, the Additional Intersection Improvements are also considered “system improvements” pursuant to O.C.G.A. Sec. 36-71-2(18) and Sec. 19-1006 of the City of Atlanta Code of Ordinances; and

WHEREAS, Section 19-1014 of the City of Atlanta Code of Ordinances authorizes the reimbursement of transportation impact fee paid for system improvements where appropriate; and

WHEREAS, a public and private partnership to construct the above-described intersection improvements offered a unique opportunity to significantly improve traffic flow on Peachtree Street and at the affected intersections; and

WHEREAS, Dewberry has completed all Required and Additional Intersection Improvements at a substantial cost in excess of the transportation impact fees which were paid in connection with the Peachtree Pointe Development; and

WHEREAS, it is in the best interest of the City of Atlanta to promote the public private partnership that led to the completion of the street system improvements outlined above; and

WHEREAS, Dewberry has submitted documentation to the City stating that the cost for the Required and Additional Intersection Improvements was \$3,120,622; and

WHEREAS, Dewberry has paid \$674, 638 in transportation impact fees in connection with the construction of the development at Peachtree Pointe; and

WHEREAS, Dewberry has agreed to reimburse the City for approximately \$35,000 in streetscape improvements to the City’s right of way which have not yet been completed;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY ORDAINS:

Section One: The Mayor or her designee is authorized to execute an agreement on behalf of the City with Dewberry for the purpose of reimbursing the amount of transportation impact fees paid in connection with the Peachtree Pointe Development for completion of the Required Street Improvements and the Additional Street Improvements, as reduced by the amount necessary to complete the streetscape plan and granting to Dewberry transportation impact fee credits for the balance of the cost of such improvements. The amounts specified in this agreement shall not exceed the amounts forth in this ordinance.

Section Two: The agreement authorized by this ordinance shall grant to Dewberry the right to transportation impact fee credits for future development in an amount not to exceed \$2,445,984, which has been calculated by reducing the amount of

the cost for the Required and Additional Intersection Improvements (\$3,120,622) by the amount of the transportation impact fees paid (\$674, 638). The credit shall be limited to those charges approved by the Department of Public Works as necessary and customary for the completion of the Required Street Improvements and the Additional Street Improvements.

Section Three: The agreement authorized by this ordinance shall grant to Dewberry the right to receive a cash reimbursement for transportation impact fees paid at the Peachtree Pointe Development in an amount not to exceed \$674,638. The cash reimbursement shall not be greater than the amount of transportation impact fees actually paid and must be less than charges approved by the Department of Public Works as necessary and customary for the completion of the Required Street Improvements and the Additional Street Improvements.

Section Five: The agreement authorized by this ordinance shall require that Dewberry's cash reimbursement from the City be reduced by the amount necessary to complete the streetscape but not to exceed \$35,000.

Section Six: The Chief Financial Officer is authorized to make such payments as required by this ordinance and direct that the charges and expenses related to this reimbursement be charged to and paid from Code Combination Identification Number deemed appropriate or as indentified by an exhibit to be attached hereto.

Section Seven: The City Attorney is authorized to prepare an appropriate agreement to effectuate the terms of this ordinance and to include such language as is necessary to conclude any outstanding legal issues with regard to the streetscape agreement, provided however that any language concluding such issues may not cause the limit of any amount stated in this ordinance to be exceeded.

Section Eight: This ordinance shall become effective upon its execution by the Mayor or at the time provided by operation of Section 2-403 of the Charter.